

Service Date: March 19, 1976

BEFORE THE UTILITY DIVISION

DEPARTMENT OF PUBLIC SERVICE REGULATION
MONTANA PUBLIC SERVICE COMMISSION

IN THE MATTER of the application)
of BLACK HILLS POWER & LIGHT CO.,)
for an order authorizing the issuance)
of 119,583 shares of its authorized)
and unissued common stock)
par value \$1 per share.)

Docket No. 6384

DEFAULT ORDER NO. 4247

On February 2, 1975, BLACK HILLS POWER & LIGHT COMPANY, hereinafter referred to as Applicant, a corporation organized and existing under and by virtue of the laws of the State of South Dakota, and qualified to transact business in Montana, filed with the Montana Public Service Commission its verified application, pursuant to Sections 70-117.1 to 70-117.6, inclusive, R.C.M. 1947, requesting an order authorizing Applicant to issue 119,583 shares of its authorized and unissued common stock, par value \$1 per share. Applicant proposes to offer the aforesaid common stock to the holders of its common stock pursuant to their preemptive rights. The shares of common stock, upon being issued, will be entitled to full voting privileges and to dividends as and when declared by the Board of Directors. The issuance and sale of the common stock will not be underwritten, but that Applicant proposes to enter into an agreement with Piper, Jaffray & Hopwood, Incorporated to act as Dealer-Manager and to otherwise assist the Applicant in connection with the offering of the additional shares.

The application is supported by exhibits and data in accordance with the rules and regulations of the Commission governing the authorization of issuance of securities by electric and gas utility companies operating within Montana. For detailed information with respect to the

general character of Applicant's business and the territories served by it, reference is made to its annual reports on file with the Commission.

At a regular open session of the Montana Public Service Commission, held in its office at 1227 11th Avenue, Helena, Montana, on March 3, 1976, there came before the Commission for final action the matters and things in Docket No. 6384, and the Commission, having fully considered the application and all the data and records pertaining thereto on file with the Commission and being fully advised in the premises, makes the following:

FINDING OF FACT

1. Applicant, BLACK HILLS POWER & LIGHT COMPANY, is a corporation organized and existing under and by virtue of the laws of the State of South Dakota and is qualified to transact business in the State of Montana.
2. Applicant is operating as a public utility as defined in Section 70-103, R.C.M. 1947, and as such is engaged in furnishing utility service in Montana.
3. The Commission has jurisdiction over the subject matter of said application under Sections 70-117.1 through 70-117.6, R.C.M. 1947.
4. Public notice of the filing of application and opportunity for the public hearing was given on February 17, 1976, in the Ekalka Eagle, Ekalaka, Montana; and no protests or requests for a formal hearing were received by February 25, 1976.
5. Applicant's Board of Directors, at a meeting of the Board on January 21, 1976, resolved to approve the application in this docket.
6. Applicant proposes to offer to the holders of its common stock, pursuant to their preemptive rights as required by the Articles of Incorporation of Applicant, 119,583 shares of common stock (hereafter referred to as "Additional Common Stock"). Applicant's stockholders

will be offered the right to subscribe for the Additional Common Stock at the rate of one share for each eight shares held of record, plus an over-subscription privilege subject to pro rata allotment in the event the total number of shares subscribed for exceeds the 119,583 shares. The stockholders of Applicant entitled to subscribe for the Additional Common Stock will be those of record at the close of business on February 20, 1976. Rights to subscribe will be evidenced by transferable Subscription Warrants which will include the over—subscription privilege to subscribe at the same price per share for shares of Additional Common Stock which are not issued upon the exercise of the Preemptive Rights. After the expiration of the Warrants, Applicant may offer to persons other than its stockholders any shares of Additional Common Stock which are not subscribed for by its stockholders.

7. A Registration Statement relative to the Additional Common Stock will be filed with the Securities and Exchange Commission under the Securities Act of 1933.

8. The shares of Common Stock will be entitled to full voting privileges and to dividends as and when declared by the Board of Directors. The voting rights of Common Stock for the purpose of election of directors is subject in case of failure to pay dividends on the Preferred Stock, to special voting rights of the Preferred Stock as a class to elect a certain percentage of directors, all as set forth in Article Fourth of the Articles of Incorporation, as amended, which said Articles are filed as Exhibit “A” Dividend rights of the Common Stock are subject to: the payment of dividends on the Cumulative Preferred Stock, the obligations with respect to retirement funds for the Preferred Stock and the Common Stock Equity test, all as set forth in Article Fourth of the Articles of Incorporation, as amended, being Exhibit “A.” Dividends on Common Stock are limited by certain earnings tests as set forth in Section 9.16 of Article 9 of the Mortgage Indenture, as amended, providing for the Bonds, which instrument is Exhibit C.

9. The holders of the Common Stock have no preemptive rights to subscribe to any issue of stock or other securities of any class of the Applicant, except (1) to subscribe to any issue of Common Stock which is sold or offered for cash, and (2) to subscribe to any securities of the Applicant convertible into or exchangeable for Common Stock if such securities are sold

or offered for cash, other than Convertible Preferred Stock sold to or through investment bankers for public offering.

10. Applicant has not asked for competitive bids in connection with the sale of the securities proposed to be issued and believes that such transaction does not warrant competitive bidding since the Additional Common Stock is to be offered to the Common stockholders pursuant to their preemptive rights. Applicant visited with representatives of Smith, Barney & Co., Inc., Blyth Eastman Dillon & Co., Inc., and Piper, Jaffray & Hopwood, Inc., in regard to fees and commissions to be charged when acting in the capacity of a Dealer-Manager. Based on such visits, Applicant selected Piper, Jaffray & Hopwood, Inc., as the fees of Piper, Jaffray & Hopwood, Inc., were comparable to or less than those indicated by the other dealers.

CONCLUSIONS OF LAW

The securities transaction proposed by Applicant, as hereinafter authorized, will be for a lawful purpose and is consistent with the public interest; the same is necessary, appropriate and consistent with the proper performance by Applicant of service as a public utility; and the aggregate amount of securities outstanding and proposed to be outstanding will not exceed the fair value of the properties and business of Applicant.

ORDER

IT IS ORDERED by the Commission:

1. The application of BLACK HILLS POWER & LIGHT COMPANY for authority to issue 119,583 shares of its authorized and unissued common stock, par value \$1 per share is approved.

NOTE: Section 70-117.6, R.C.M. 1947, provides that neither the issuance of securities by Applicant pursuant to the provisions of this order, nor any other act or deed done or

performed in connection therewith, shall be construed to obligate the State of Montana to pay or guarantee in any manner whatsoever any security authorized, issued, assumed or guaranteed hereunder.

The approval of this application shall not be construed as precedent to prejudice any future action of this Commission.

Issuance of this Order does not mean acceptance of the Applicant's exhibits or other material accompanying the application for any purpose other than the issuance of this Order.

Done March 3, 1976, by a 4 - 0 Vote.

BY ORDER OF THE PUBLIC SERVICE COMMISSION:

GORDON E. BOLLINGER, Chairman

P.J. GILFEATHER, Commissioner

JAMES R. SHEA, Commissioner

GEORGE TURMAN, Commissioner

ATTEST:

Gail E. Behan
Secretary
(SEAL)

NOTICE: You are entitled to judicial review of this Order. Judicial review may be obtained by filing within thirty (30) days from the service of this Order, a petition for review pursuant to Section 82-4216, R.C.M. 1947.